

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 16-CV-00419-MCA-KBM
No. 14-CR-04062-MCA

RENE GONZALEZ-CHAVEZ,

Defendant.

ORDER

This matter is before the Court, *sua sponte* under rule 4(b) of the Rules Governing Section 2255 Cases, on Defendant's *pro se* Motion for Appointment of Counsel and Waiver of Right to Appear in Person at the Resentencing Hearing [CV Doc. 1; CR Doc. 52], which was docketed as a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. On May 16, 2016, the Court notified Defendant, pursuant to *Castro v. United States*, 540 U.S. 375 (2003), that it intended to recharacterize his *pro se* motion as a § 2255 motion and afforded Defendant an opportunity to withdraw the motion or to amend it to add additional claims. [CV Doc. 2; CR Doc. 54] On June 23, 2016, Defendant's counsel timely filed a Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255, contending that "[b]ased upon the Supreme Court's recent decision in *Johnson v. United States*, 135 S. Ct. 2551 (June 26, 2015), Mr. Gonzalez-Chavez does not qualify for a 16-level enhancement pursuant to U.S.S.G. § 2L1.2, and his sentence violates due process of law." [CV Doc. 6; CR Doc. 60]

Defendant's *pro se* Motion for Appointment of Counsel and Waiver of Right to Appear in Person at the Resentencing Hearing [CV Doc. 1; CR Doc. 52], as amended by his Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255 [CV Doc. 6; CR Doc. 60], will be recharacterized

as a § 2255 motion. The Court will direct the United States to answer Defendant's motion.

IT IS HEREBY ORDERED that the Defendant's *pro se* Motion for Appointment of Counsel and Waiver of Right to Appear in Person at the Resentencing Hearing [CV Doc. 1; CR Doc. 52], as amended by his Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255 [CV Doc. 6; CR Doc. 60], will be recharacterized as a § 2255 motion;

IT IS FURTHER ORDERED that Clerk is directed to forward to the United States of America a copy of Defendant's recharacterized and amended § 2255 motion [CV Docs. 1 and 6; CR Docs. 52 and 60], and supporting papers and exhibits, if any, together with a copy of this Order;

IT IS FURTHER ORDERED that, within thirty (30) days of entry of this Order, the United States answer Defendant's recharacterized and amended § 2255 motion.


UNITED STATES CHIEF MAGISTRATE JUDGE